IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 479 OF 2006

ULTRACON CONSTRUCTIONS PVT.LTD.,REP.BY ITS MANAGING DIRECTOR SHRI MANOJ S. PAI DUKLE AND ANR., ...Petitioners

Versus

STATE OF GOA THROUGH ITS CHIEF SECRETARY AND ANR., ...Respondents

Mr.M.S. Usgaonkar, Sr. Advocate with Mr. Sudesh Usgaonkar, for the Petitioners.

Mr. S.S. Kantak, AG with Ms. R. Chodankar, Aga for the Respondents.

Coram:- DR. S. RADHAKRISHNAN & N. A. BRITTO, JJ.

Date:- 17th October, 2006

P.C.:

1. Heard the learned Senior Counsel for the Petitioners and the learned Advocate General for the respondents.

2. The main challenge in the petition is with regard to Condition 5.1 which reads as under :-

" The enlistment of a Contractor in PWD/WRD, Goa shall only entitle him to be considered for issue of tender papers subject to the conditions laid down in individual Notice Inviting Tenders. It shall not confer any right on him either to be necessarily issued the tender papers or for award of work. "

3. We have perused the Tender Notice dated dated 29/08/2006 wherein Clause 1.0 deals with the Issue of Tender Documents which reads as

under :-

" Issue of Tender Documents:-

The tender forms will be issued to all eligible Contractors whose applications for tender are received in this office not later than 5.00 p.m. on 29.09.2006 along with following documents:

i) Notarized copy of valid Registration certificate in the appropriate Class and Category.

ii) Lists fo works in hand.

iii) Certificate of experience issued by appropriate authority of having executed work of similar nature.

iv) Certificate of satisfactorily executing three similar works each value 40% percent of the estimated cost put to tender or two works each of value 50% of estimated cost put to tender or one work of 80% of the estimated cost put to tender (rounded off to nearest 10 lakh) in the last seven years ending last day of August, 2006.

The terms and conditions of forms can be obtained from this office from 11.00 a.m. to 4.30 p.m. on all working days upto 3.10.2006. The tender forms will be issued only to the eligible applicant in person or to his authorized representatives, holding power of attorney to receive the tender papers on his behalf.

If the tender papers are needed by psot, Rs.150/- (Rupees one hudnred fifty only) non-refundable, shall be deposited in the office of the undersigned. However, the Department does not take any responsibility for ;postal delay if any. "

4. The learned Advocate General for the respondents pointed out that the petitioners do not qualify for issuance of the said Tender Document as it is apparent from paragraph 14 of the petition.

5. Mr. Usgaonkar, the learned Senior Counsel for the petitioners also concedes that the petitioners do not qualify to obtain the tender document as they have not fulfilled Condition 1.0 quoted hereinabove. The main grievance of the petitioners is that no one should be estopped from

obtaining a Tender Document and from applying and taking part in the tender process. The Authority, can, after the tender is submitted, decide whether the tenderer is eligible or not and nobody should be prevented from participating in the tender process by obtaining a tender document.

6. We have seen that the contract involved is valued around Rs. 13.03 crores and it is for construction of a Minor Irrigation Tank involving specialised skill. The learned Advocate General has submitted that the tenderor should have the requisite expertise and that they are not desirous of allowing each and everyone to apply but only allow those persons who are capable of executing the work. Under the circumstances, the said Clause 1.0 has been incorporated.

7. We do not find anything arbitrary or irrational in the said clause 1.0. Otherwise if we accept the argument of the learned Senior Counsel for the Peltitioner, then every registered contractor in the State of Goa in Class I will apply. The objective of the above clause is only to allow such contractors to compete, who will be able to execute the contract. Admittedly in this case, the Petitioner does not fulfil the eligibility criteria. In fact five other contractors like the Petitioner from Class IA were also denied tender documents.

8. We do not find any merit in the above Petition. Hence stands dismissed.

DR. S. RADHAKRISHNAN, J.

N. A. BRITTO, J.

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